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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/789,630
Filing Date: February 27, 2004
Appellant(s): TREMPALA, DOHN J.

MAILED
JAN 22 2008
GROUP 3600

Robert J. Roby
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/21/07 and 7/25/07 appealing from the
Office action mailed 11/20/06.

It is noted that upon further review and consideration, the rejections of claims 1-7, 31-38 under 35 USC 102 and 103 have been withdrawn and these claims are now considered allowable over the prior art of record. Furthermore, the rejection of claim 33 under 35 USC 112 has also been withdrawn. Therefore, this answer is in response to the appeal of claims 24-30.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

In view of the note above, the only claims now on appeal are claims 24-30.

Claims 1-7, 31-38 are allowed.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. Claims 1-7 and 31-38 under 35 USC 102 and 103; Claim 33 under 35 USC 112.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,704,261	STRAUCH et al	1-1998
5,033,501	STEHLING	7-1991
4,651,771	BORENSTEIN et al	3-1987

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims: It is noted at the outset that in the final rejection of claims 24 and 30, in the initial statement

of the rejection, Patterson et al was erroneously stated instead of Strauch, however, as appellant has noted, the body of the rejection cites Strauch.

1. Claims 24-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Strauch 5,704,261. Strauch et al teach a key/tool member 3 comprising a head 2 having a raised portion on the distal tip thereof to engage a structure, a handle shaft 3,4, defining a deformation zone without a relief cut which, upon torqueing of the tool beyond a predetermined amount, deforms plastically (col. 4, lines 10-24; claims 10,12). It would have been obvious to one of ordinary skill in the art to utilize such a tool/key as taught by Strauch et al, on a locking cap actuator such as that previously discussed with respect to Hoshino. It is noted that the preamble recitation of a "locking cap" key does not impart structure to the key and is considered intended use of the key and not accorded patentable weight. Furthermore, the limitation of claim 28 does not further limit the key structure and is not accorded patentable weight.
2. Claims 24,29 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Stehling '501 in view of Strauch et al '261. Stehling teaches a key member having a hole portion (at 40) which is capable of receiving a key ring. It would have been obvious to one of ordinary skill in the art to modify the key of Stehling by providing a deformation zone as taught by Strauch et al as an obvious matter of design choice in enhancing the security of the lock cap.
3. Claims 24,30 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Borenstein '771 in view of Strauch et al '261. Borenstein et al teach a key member

comprising a T-shaped cross member configuration at one end (49/66) with a hole 66 disposed in one cross member. It would have been obvious to one of ordinary skill in the art to modify the key of Borenstein et al by providing a deformation zone as taught by Strauch et al as an obvious matter of design choice in enhancing the security of the lock cap.

(10) Response to Argument

With regard to Appellant's arguments against the Strauch rejection of claims 24-28 under 35 USC 102(b), set forth on page 12-13 of the brief, it is maintained that a screwdriver bit is considered a "key" type tool and therefor anticipates the claimed structure. It is well known in the art that a key is a tool for opening a lock and a screwdriver is also a tool, therefore they are analogous. Furthermore, appellant's arguments that "there is no disclosure of a locking cap" in Strauch and that "the preamble recitation of a locking cap" is a limitation on the claim are not persuasive. It is maintained that the locking cap is not positively claimed and is mere intended use of the claimed key. With respect to appellant's argument on page 13, lines 7-9, that Strauch fails to teach plastic deformation, appellant is respectfully directed to Strauch, column 1, lines 52-66 and throughout the disclosure. With respect to the recitation in claim 28 of a recessed pattern on the locking cap portion, which appellant argues on page 13, line 15-17, it is maintained that the locking cap is not positively claimed and is merely intended use of the key.

With respect to Appellant's arguments against the Stehling and Strauch rejection of claims 24 and 29 under 35 USC 103(a) set forth on pages 15-16 of the brief, it is maintained that one of ordinary skill in the tool art would have looked to other torque tools to provide a torque limiting means as needed for the desired function. Appellant's argument that Stehling and Strauch are not combinable is not persuasive. It is maintained that the structure of the claimed key having a head and handle and having a deformation zone in the handle, wherein the handle includes a hanging ring is taught by

the combination of Strauch and Stehling. Stehling clearly teaches a hanging ring (hole 40) which is capable of being used to hang the key for storage, while Strauch clearly teaches a handle shaft with a plastic deformation zone as previously discussed. The limits to which the key and handle will or will not deform are not, and which make up the bulk of appellant's arguments on pages 15-16 are not set forth in claims 24 and 29 and therefore are irrelevant and not persuasive.

With regard to Appellant's arguments against the Borenstein and Strauch rejection of claims 24 and 30 under 35 USC 103(a) on page 17 of the brief, it is maintained that Borenstein teaches the claimed key structure having a T-shaped cross member configuration with a hole at one end and that Strauch teaches the well known use of a deformation zone for torque limiting purposes. Appellant's argument that there is no hole in the key of Borenstein is not persuasive since Figure 4 clearly shows a hole 66. Appellant's argument that Strauch fails to show a deformation in the handle but rather teaches the bit itself deformed is also not persuasive. Appellant is directed to Strauch, col. 1, lines 1-3, which states that "the invention relates to... a torque transmitting tool, preferably a screwdriver or a screwdriver bit". Therefore, the disclosed deformation zone can be on the bit shaft or a screwdriver handle shaft according to Strauch and such a teaching clearly reads on the claimed key. Furthermore, contrary to appellant's argument on page 17 that there is no teaching of a deformable key without a relief cut, it is maintained that Strauch, which is relied upon for the deformation, does not require a relief cut.

Accordingly, appellant's arguments are not persuasive and the rejections of claims 24-30 should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

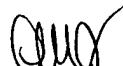
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Suzanne Dino Barrett

Conferees:

Darnell Jayne 

Meredith Petrvick 